

ESTTA Tracking number: **ESTTA486277**Filing date: **07/30/2012**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	AFM FOOD SERVICE CORP. d/b/a ADVANTAGE MARKETING		
Entity	Corporation	Citizenship	New York
Address	159 Adams Avenue Hauppauge, NY 11788 UNITED STATES		

Attorney information	Panagiota Betty Tufariello, Esq. Intellectulaw, The Law Offices of P.B. Tufariello, P.C. 25 Little Harbor Rd. Mt. Sinai, NY 11766 UNITED STATES betty@intellectulaw.com Phone:631-476-8734
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**Registration Subject to Cancellation**

Registration No	3271825	Registration date	07/31/2007
Registrant	ADVANTAGE SALES & MARKETING LLC 18100 Von Karman Avenue Suite 900 Irvine, CA 92612 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 035. First Use: 1997/10/08 First Use In Commerce: 1997/10/08 All goods and services in the class are cancelled, namely: ADVERTISING, PROMOTION, PRODUCT MERCHANDISING, SALES PROMOTION AND FIELD MARKETING SERVICES FOR MANUFACTURED EDIBLE AND NON-EDIBLE GOODS FOR SALE TO THE CONSUMER; DISTRIBUTORSHIPS FEATURING A WIDE VARIETY OF CONSUMER GOODS OF OTHERS; BUSINESS CONSULTING SERVICES REGARDING ADVERTISING, PROMOTION, PRODUCT MERCHANDISING, SALES PROMOTION AND FIELD MARKETING OF MANUFACTURED EDIBLE AND NON-EDIBLE GOODS FOR SALE TO THE CONSUMER; PRODUCT MERCHANDISING; IMPORT SERVICES IN THE FIELD OF MANUFACTURED EDIBLE AND NON-EDIBLE GOODS FOR SALE TO THE CONSUMER; INDEPENDENT SALES REPRESENTATIVES IN THE FIELD OF A WIDE VARIETY OF CONSUMER GOODS OF OTHERS
Class 036. First Use: 1997/10/08 First Use In Commerce: 1997/10/08 All goods and services in the class are cancelled, namely: BROKERAGE SERVICES IN THE FIELD OF MANUFACTURED EDIBLE AND NON-EDIBLE GOODS FOR SALE TO THE CONSUMER

**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Mark Cited by Petitioner as Basis for Cancellation**

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ADVANTAGE MARKETING		
Goods/Services	ADVERTISING, PROMOTION, PRODUCT MERCHANDISING, SALES PROMOTION AND FIELD MARKETING SERVICES FOR MANUFACTURED EDIBLE AND NON-EDIBLE GOODS FOR SALE TO THE FOOD SERVICE INDUSTRY; DISTRIBUTORSHIPS FEATURING A WIDE VARIETY OF CONSUMER GOODS OF OTHERS; BUSINESS CONSULTING SERVICES REGARDING ADVERTISING, PROMOTION, PRODUCT MERCHANDISING, SALES PROMOTION AND FIELD MARKETING OF MANUFACTURED EDIBLE AND NON-EDIBLE GOODS FOR SALE TO THE FOOD SERVICE INDUSTRY; PRODUCT MERCHANDISING; INDEPENDENT SALES REPRESENTATIVES IN THE FIELD OF A WIDE VARIETY OF CONSUMER GOODS OF OTHERS; and BROKERAGE SERVICES IN THE FIELD OF MANUFACTURED EDIBLE AND NON-EDIBLE GOODS FOR SALE IN THE FOOD SERVICE INDUSTRY		

Attachments	Petition for Cancellation.pdf ( 9 pages )(328490 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by USPS Express Mail Post Office to Addressee on this date.

Signature	S/PANAGIOTABETTYTUFARIELLO/S
Name	Panagiota Betty Tufariello, Esq.
Date	07/30/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

-----X  
AFM FOOD SERVICE CORP.  
d/b/a ADVANTAGE MARKETING,

Petitioner,

**CANCELLATION No.** \_\_\_\_\_

vs.

In Re U.S. Registration No. 3,271,825  
for the mark "ADVANTAGE SALES  
AND MARKETING"

ADVANTAGE SALES & MARKETING, LLC

Respondent.

Date of Registration: July 31, 2007

-----X  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**PETITION FOR CANCELLATION**

Petitioner AFM FOOD SERVICE CORP. d/b/a ADVANTAGE MARKETING, is a New York corporation with a principal place of business at 159 Adams Avenue, Hauppauge, New York, (hereinafter "Petitioner").

To the best of Petitioner's knowledge the name and address of the current owner of U.S. Registration No. 3,271,825 for the mark ADVANTAGE SALES AND MARKETING, issued on July 31, 2007, is Advantage Sales & Marketing LLC, 18100 Van Karman Avenue, Suite 900, Irvine, CA 92612.

Due to certain recent developments, Petitioner believes that it is and will continue to be damaged by U.S. Registration No. 3,271,825. Thus, in accordance with 37 C.F.R. § 2.111 (a), Petitioner hereby requests and petitions for cancellation of same, pursuant to 15 U.S.C. § 1064.

The grounds for the present Petition for Cancellation are as follows:

1. Petitioner was first formed in 1974 under the name Advantage Food Marketing Corporation.
2. Since its inception in 1974, Petitioner has provided and continues to provide brokerage, advertising and marketing services in the field of manufactured food products for distribution and sale to the food service industry for eventual sale to the consumer (“the Services”) within the New York Metro Tri State Marketing area.
3. Through its established market relationships, Petitioner connects the finest Principals/Manufacturers with key Distributors and key Operators to obtain and gain total market penetration. Its services include offering its clients, distributors and impact operators food service sales solutions, which include but are not limited to marketing and advertising and developing incremental sales to operators through continuous field sales support, dealing with each market segment.
4. On or about 1974, Petitioner adopted and started using the mark “AFM ADVANTAGE FOOD MARKETING CORP” in connection with its Services.
5. By 1990 it was known in the industry as “Advantage Marketing.”
6. On or about 2000, Petitioner changed its mark to ADVANTAGE MARKETING, in connection with its services.
7. Petitioner promotes its services in connection with its trademarks in a variety of ways.
8. It has been and in many cases continues to be an active member of the following associations:
  - a. National Frozen Food Association
  - b. National Prepared Frozen Food Association
  - c. Eastern Frosted Foods Association
  - d. National Food Brokers Association
  - e. International Foodservice Executives Association
  - f. National Restaurant Association

- g. International Fisheries Institute
- h. International Manufacturers Association
- i. New York State Restaurant Association
- j. School Nutrition Association
- k. Society for Foodservice Management
- l. New York School Nutrition Association;
- m. New Jersey School Food Service Association.

9. It promotes its services in connection with its trademarks through its website

[www.advantagemarketingny.com](http://www.advantagemarketingny.com).

10. Since its inception, Petitioner attends numerous trade shows throughout the year. In fact, it is not unusual for Petitioner to attend and/or participate in at least 50+ trade shows per year. Such trade shows have included, and are not limited to:

- a. National Prepared Frozen Food Show
- b. New York State School Nutritional Show;
- c. National School Nutrition Show
- d. New Jersey School Nutrition Show
- e. International Hotel/Motel Show
- f. New Jersey Garden State Show;
- g. Sysco Metro Show
- h. Sysco CT Show
- i. Dicarlo Foodservice Show
- j. J Kings Foodservice Show;
- k. Ace Endico Food Show
- l. Landmark Show
- m. NYS Regional Seminars
- n. USF Foodservice Show
- o. Greater NY Health Care Show
- p. NJ Health Care Show
- q. Maximum Quality Food Show
- r. Jamac Food Show
- s. New York State Restaurant Association Show;
- t. National Pizza Show

11. In the last five years alone it has invested in excess of half a million dollars in its advertising and promotion programs supporting its manufacturers, distributors and private placement providers.

12. As a result, since its inception Petitioner has done business with over 100 manufacturers, over 300 distributors and over thousands of private placement providers in New York, New Jersey and Connecticut and has realized millions of dollars in gross sales of product, in the last five years alone.

13. Over the years, Petitioner has been honored by its manufacturers, distributors and even the media. In the frozen food category, it has been presented with the following awards, which now are displayed proudly in Petitioner's offices:

- a. National Food Service Broker of the Year-1989 by Lender's Bagel Bakery
- b. Area Sales Manager/Broker of the Year-1989 Awarded by Zartic, Inc.
- c. Budget Breaker Award by Old Salt Seafood
- d. Best Booth in Show Award by Diversified Foodservice Distributors
- e. Pierre Food National Broker of the year;
- f. Cavendish Farms National Broker of the year;
- g. NORPAC 1994 Broker of the Year
- h. NORPAC 1997 Broker of the Year;
- i. Sugardale Foods National Broker of the year;
- j. Knouse Foods 1991 Foodservice Broker of the Year
- k. Knouse Foods 1992 Foodservice Broker of the Year
- l. Michael Foods 2006 National "Go for the Great Champion" Award Winner

14. Petitioner is also on the Broker Advisory Council for the following companies:

- a. Schwan Foods
- b. Sugardale Foods
- c. Jennie-O Turkey Store

15. Finally, Petitioner has been the subject of unsolicited media coverage including but not limited to the following:

- a. For their November 1989 issue, **Restaurant News** one of the two local foodservice publications servicing the metropolitan New York Area, chose to do a special feature article on Petitioner. This was the first time this honor was given to a foodservice brokerage company in this area.

- b. On March 2006 **Modern Food Service** wrote an article about Petitioner's 2006 Growth. In it, Modern Food specifically noted Petitioner's 33 year history in the New York Metro Area.
- c. Just recently, in its Spring 2012 issue, **US Business Executive** dedicated an entire article to Petitioner.
- d. Petitioner was featured in PAUL NEWMAN'S BOOK **Shameless Exploitation in Pursuit of the Common Good** (Nan A. Talese/Doubleday 2003 pg 48, pg 59).

16. It is clear from the foregoing that as a result of Petitioner's use and promotion of its mark ADVANTAGE MARKETING, such mark has acquired considerable value, and is well-known in the relevant food service trade. As early as the 1990s Advantage Marketing came to be known as "the Advantage Team."
17. Consequently, the mark ADVANTAGE MARKETING identifies and distinguishes Petitioner as the source for the high quality food service sales and marketing services with which the mark is being used.
18. Accordingly, Petitioner is the owner of all common law rights, title, and interest in and to the Mark ADVANTAGE MARKETING.
19. As a result of Petitioner's extensive use and promotion of its services in commerce, the ADVANTAGE MARKETING mark has acquired considerable value, is well-known to the consuming public and trade, and identifies and distinguishes Petitioner exclusively and uniquely as the source of the high quality services with which the ADVANTAGE MARKETING mark is being used.

20. As was set forth herein above, upon information and belief, Registrant Advantage Sales & Marketing, LLC (hereinafter "Respondent") is a California limited liability company with a place of business at 18100 Von Karman Avenue, Suite 900, Irvine, CA 92612.
21. Respondent is the owner of U.S Trademark Registration No. 3,271,825, issued on July 31, 2007, for the mark "ADVANTAGE SALES AND MARKETING" used in connection with "advertising, promotion, product merchandising, sales promotion and field marketing services for manufactured edible and non-edible goods for sale to the consumer; distributorships featuring a wide variety of consumer goods of others; business consulting services regarding advertising, promotion, product merchandising, sales promotion and field marketing of manufactured edible and non-edible goods for sale to the consumer; product merchandising; import services in the field of manufactured edible and non-edible goods for sale to the consumer; independent sales representatives in the field of a wide variety of consumer goods of others" in International Class 35, and with "brokerage services in the field of manufactured edible and non-edible goods for sale to the consumer " in International Class 36.
22. Upon information and belief, Respondent started using the "ADVANTAGE SALES AND MARKETING" mark in interstate commerce no earlier than October 8, 1997.
23. By comparison, and as stated herein above, Petitioner began using its ADVANTAGE marks as early as 1974. Accordingly, Petitioner has prior rights to the ADVANTAGE MARKETING mark; rights that precede Respondent's rights to its mark ADVANTAGE SALES & MARKETING, as embodied by U.S. Registration 3,271,825.



24. It recently came to Petitioner's attention that Respondent/Registrant has expanded its business to offer its services to the food service industry under its trademark

ADVANTAGE SALES AND MARKETING, in direct competition with Petitioner.

25. As a result, Petitioner has experienced numerous incidents of confusion.

26. Thus, the use and continued registration of Respondent's Mark is likely to cause confusion between Petitioner's and Respondent's mark, under Section 2(d) of the Lanham Act. Accordingly, the continuation of Registration 3,271,825 on the Principal Register has caused and will cause significant damage to Petitioner.

**WHEREFORE**, Petitioner prays that Registration No. 3,271,825 be cancelled, and that this Petition for Cancellation be sustained in favor of Petitioner.

The requisite filing fee for this Petition to Cancel is submitted herewith.

Respectfully Submitted,

**INTELLECTULAW**  
**THE LAW OFFICES OF P.B. TUFARIELLO, P.C.**

Dated:

July 30, 2012

By:

Panagiotis Betty Tufariello  
Panagiotis Betty Tufariello, Esq.

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DECLARATION

I, PANAGIOTA BETTY TUFARIELLO hereby declare:

That I am the Attorney for the Petitioner that I have read and signed the foregoing Petition for Cancellation and know the contents thereof; and that the allegations are true.

I further declare that I am authorized to make this declaration; that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this Cancellation.

Dated: 07/30/2012

  
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Panagiota Betty Tufariello  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing PETITION FOR CANCELLATION has been filed with the Trademark Trial and Appeal Board via ESTTA on July 30, 2012. I also certify that on this date, the foregoing PETITION FOR CANCELLATION is being deposited with the United States Postal Service as Express Mail No. EI 466542586 US addressed to Respondent:

Advantage Sales & Marketing, LLC  
18100 Von Karman Avenue, Suite 900  
Irvine, CA 92612

and as Express Mail No. EI 466542572 US addressed to Respondent's representative:

Jennifer A. Van Kirk  
LEWIS AND ROCA LLP  
40 North Central Avenue, Suite 1900  
Phoenix, AZ 85004

On Monday, July 30, 2012

  
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Paragiota Betty Tufariello, Esq.